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SUPREME COURT OF THE
UNITED STATES OF AMERICA

NO.

October 1982 TERM

LYNN B. DEAN

V.

HONORABLE WILLIAM J. GUSTE, JR.,
ATTORNEY GENERAL OF THE STATE OF LOUISIANA,
HONORABLE JOHN F. ROWLEY, DISTRICT
ATTORNEY FOR THE PARISH OF ST. BERNARD
AND THE ST. BERNARD PARISH SCHOOL BOARD
OF THE STATE OF LOUISIANA

****

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA

PETITON FOR CERTIORARI

ROY A. RASPANTI
3732 Canal Street
New Orleans, La. 70119
(504) 482-5701
Attorney for
Lynn B. Dean

QUESTIONS PRESENTED FOR REVIEW

1. Whether the right of the public and the press to attend meetings of governmental bodies is guaranteed under the United States Constitution.
   a. Whether the right of the public and the press to tape record meetings of a governmental body in executive session is guaranteed under the United States Constitution.
2. Whether the regulation prohibiting the recordation by tape of the proceedings of an executive session of the St. Bernard Parish School Board is unconstitutionally overbroad.
3. Whether the regulation prohibiting the recordation by tape of the proceedings of an executive session of the St. Bernard Parish School Board is an arbitrary limitation upon

petitioner's First Amendment right to gather information.

4. Whether the regulation prohibiting the recordation by tape of the proceedings of an executive session of the St. Bernard Parish School Board is a prior restraint of speech.

LIST OF ALL PARTIES

1) LYNN B. DEAN, Braithwaite, Louisiana

Represented by:

ROY A. RASPANTI, ESQUIRE, New Orleans, Louisiana

2) ST. BERNARD PARISH SCHOOL BOARD, Chalmette, Louisiana

Represented by:

JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD, CHALMETTE, LOUISIANA

NUNZIO S. CUSIMANO, JR., ASSISTANT DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD, CHALMETTE, LOUISIANA

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OFFICIAL REPORT OF OPINION OF THE FOURTH CIRCUIT, COURT OF APPEAL, STATE OF LOUISIANA, DELIVERED IN 414 So.2d. 862 (May 11, 1982)

GROUNDS ON WHICH JURISDICTION IS INVOKED

1) Date of Judgment of Fourth Circuit, Court of Appeal, State of Louisiana: May 11, 1982;

   Date of Denial of Writ by Supreme Court of Louisiana: July 2, 1982;

2) Statutory provisions conferring jurisdiction on this Honorable Court: 28 USCA 1257 and 28 USCA 2101

CONSTITUTIONAL PROVISIONS AND STATUTES WHICH CASE INVOLVES

1) "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Amendment 1, United States Constitution.

STATEMENT OF THE CASE

Petitioner, LYNN B. DEAN, is a member of the St. Bernard Parish School Board, St. Bernard, Louisiana.

In February, 1981, the School Board, by a vote of 10 to 1, enacted a rule prohibiting the tape recordation of the proceedings of an executive session by any members of the Board. MR. DEAN's was the only dissenting vote cast. On March 11, 1981, when MR. DEAN attempted to tape record the proceedings of an executive session of the School Board he was advised by the Board that his actions were in violation of the rule of February, 1981.

Petitioner thereafter instituted the present action for Declaratory Judgment, alleging that the statutory law regarding executive sessions of a public body (Louisiana Revised Statute 42:4.1-42:12 gives no clear answer with respect to the question raised, that is, whether peti-

tioner may tape record the proceedings of an executive session of the School Board.

Without addressing the constitutional issues raised by petitioner, the Trial Court found that the School Board's rule was not arbitrary or unreasonable in light of Louisiana's so called "Sunshine Law". Accordingly, it upheld the regulation under the authority of Estay v LaFourche Parish School Board, 230 So. 2nd 443 (La.App.1,1969), which requires the Courts of Louisiana to uphold the rules and regulations adopted by School Boards unless they are found to be arbitrary and unreasonable.

Petitioner took the matter on appeal to the Fourth Circuit Court of Appeal for the State of Louisiana and the Court held that the School Board's regulation which prohibits the tape recordation of executive sessions does not offend the First Amendment.

A Writ of Certiorari was taken to the Louisiana Supreme Court and was denied on July 2, 1982.

The constitutional issue was raised in oral argument in the Trial Court but was not addressed by the Court (see appendix, oral arugment.* The constitutional issue was raised in the Fourth Circuit, Court of Appeal of the State of Louisiana by written brief and that Court held that the First Amendment was not offended (see appendix, Judgment 4th Circuit Court of Appeal). The constitutional issue was raised in the Louisiana Supreme Court by Writ of Certiorari but the Court denied the Writ (see appendix).

ARGUMENT

Petitioner comes to this Court, not only on his own behalf, but on the behalf of the public he represents. As an elected official, he acts as their surrogate in the governing body. They acquire their information about the School Board from him.

> "Instead of acquiring information about trials by first hand information or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public." Richmond Newspapers, Inc. v Virginia, 100 S.Ct. 2814 (1980)

Today the average citizen can rarely

> "obtain for himself the information needed for the intelligent discharge of his political responsibility... In seeking out the news, the press therefore acts as an agent of the public... The underlying right is the right of the public generally. The press is the necessary representative of the public's interest." Saxbe v Washington, 417 U.S. 843, 94 S.Ct. 2811, (1974); Powell, J., dissent

No person is better qualified to act as an "agent of the public" or to act as the

"necessary representative of the public's interest" than the one who is elected by the people to do just that. In addition, freedow of the press extends to petitioner since "freedom of the press is a fundamental personal right which extends to any person who disseminates information." Oregon Law Review 58:521, 535(1980).

The Court below found that the states are free to prohibit public attendance at meetings of governmental bodies. Therefore, the Court concluded, they are free to prohibit the tape recording of these proceedings. Additionally, the Court stated that even if it wished to acknowledge the right of the public to attend meetings of governmental bodies, it would not have chosen the present case to announce it since petitioner sought to record not the public meetings of the School Board, but its executive sessions.

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Guste, Jr., et al Augustine, Judge, J.414 So. 2nd 862, 1982. See also joint stipulation of facts, appendix.

In fact, this case would be a very good case in which to acknowledge that right. If public matters are discussed at an executive session of a governmental body in contravention of the law, then the public is most certainly entitled to observe and listen to the discussion of those matters. In other words, an executive session is a public meeting when the governmental body goes outside of the law and discusses public matters at an executive session. The legislative history of 5 U.S.C. 552, The "Government in the Sunshine Act" states in Part:

> "...One reason for requiring a transcript or recording is that, once a closed meeting is actually held, most or all of it may turn out to be non-exempt. The existence of the transcript or recording allows the release of the discussion as soon as this fact becomes apparent (albeit after the meeting has been held). A second reason, related to judicial review, is discussed under subsection

(h), infra ...
Subsection (h) ...

> The power of the Court to release the non-exempt portion of a transcript, recording, or transcription of an unlawfully closed meeting points up another reason for requiring such records to be made. Since a judicial determination that a meeting was unlawfully closed will in most instances come long after the meeting has been held, and since the substantive action taken at the meeting cannot be nullified when the Court is acting solely under this subsection, the possibility of finding out what transpired at the meeting represents the only realistic remedy available to plaintiff." Legislative History 5 U.S.C. 552, "Government in the Sunshine Act", U.S. Code Congressional and Administrative News, 1976, p.2197 & 2199. (See also Parent Community Alliance v Orleans Parish, 385 So 2nd 33 (La.App. 4,1980) in which the Court held that testimony as to what was discussed at an executive session of a School Board meeting was admissible evidence, since only be ascertaining the contents of such discussion could a determination be made as to whether it was exempt).

As the law stands now, a governmental body could, conceivably, conduct all of its business in executive session and the only way the public could find out about the proceedings would be if a member of

that body decided to tell the public about it. It would be up to the governmental body to report itself to the public when it violated the law. In an executive session, where only members of the governmental body can be present, the governmental body must be its own watchdog.

It is petitioner's contentions that the public's right to attend meetings of governmental bodies is supported not only by history, but also by the fact that it is of the utmost importance to our representative form of government.

There is much historical evidence to support the right of the public and press to attend meetings of governmental bodies beginning with The Massachusetts Body of Liberties, 1641, "the earliest American Bill of Rights".

The Massachusetts Body of Liberties, 1641 contained the following language:

"12. every man whether inhabitant or

> fforeiner, free or not free shall have libertie to come to any publique Court, Councel, or Towne meetings, and either by speech or writeing to move any lawfull, seasonable, and materiall question, or to present any necessary motion, complaint, petition, bill or information, whereof that meeting hath proper cognizance, so it be done in convenient time, do order, and respective manner." Perry and Cooper - Sources of our Liberties 1959, p.80; (see also Schwartz-The bill of Rights 1971, p.69 where he referred to it as an important forerunner of the Federal Bill of Rights).

Chief Justice Burger in Richmond Newspapers, Inc. v Virginia, 100 S.Ct. 2814 (1980) stated:

> "Looking back, we see that when the ancient 'Towne meeting' form of trial became too cumbersome, 12 members of the community were delegated to act as its surrogates, but the community did not surrender its right to observe the conduct of trials. The people retained a 'right of visitation' which enabled them to satisfy themselves that justice was infact being done." Richmond p.28, 25. supra

In the same vein, it should be noted that when the ancient "Towne meeting" form of lawmaking body became too cumbersome, certain members of the community were

delegated to act as its surrogates or representatives in a smaller lawmaking body:

> "After 1650, when the general Court became a representative body instead of an assemblage of all the freemen ..." Source of Our Liberties supra (Charter of Rhode Island) p.165.
>
> See also Source of our Liberties, supra (Frame of Government of Pennsylvania) p. 207-8, 214.; Source of Our Liberties, supra (Mayflower Compact)p.58 and Source of Our Liberties, supra (Charter of Maryland)p.99.

But the community did not surrender its right to observe the conduct of lawmaking bodies. If they did not in fact observe the conduct of their lawmaking bodies, they accomplished the same goal by retaining the right to instruct their representatives. This right enabled them to satisfy themselves that their will was in fact being done:

> "XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good, give instructions to their representatives, and to request of the legislative body, by the way of address, petitions or remonstrances,

redress of the wrongs done them, and of the grievances they suffer." Constitution of Massachusetts-Source of our Liberties, supra, p.377.

See also Constitution of New Hampshire, Source of Our Liberties, supra p. 385.; Constitution of Pennsylvania, Source of Our Liberties, supra p. 331.; Constitution of Vermont, XVIII, Source, supra, p. 366.; Constitution of North Carolina, Source of Our Liberties, supra, p. 356.; and Constitution of Vermont, Source of Our Liberties, supra, p. 366.

It is important to make it clear that the words "instruct their representatives" meant more than just "writing your Congressman" as we do today. It meant binding instructions. "The validity of instructions binding on representatives was accepted in 18th Century American constitutional theory." Pamphlets of the American Revolution, 1750-1776 at 91-99 (B. Bailyn ed. 1965). There was considerable debate during the constitutional convention as to whether or not the first amendment should contain the words "tc instruct their representatives".

Bill of Rights, Schwartz, p. 1091-1105. One of the main concerns expressed by opponents was that the representative would be bound by instructions of the public if the language was made a part of the constitution.

Reflection upon this tradition of instructing representatives will demonstrate that the community did not surrender its right to observe the conduct of the lawmaking bodies when it elected representatives. Consider that, when the colonists elected 12 members of the community to serve as jurors, they did not instruct them as to how to vote. They could not do so because they had not heard the evidence yet. But they did reserve their right to observe the jurors by adhering to the principle that all trials were to be public. In this way they could hold the jurors accountable.

Next consider that, when the colonists elected representatives to a

lawmaking body, they went further than they did with jurors. They instructed their representatives as to how they wanted them to vote. In contrast to the jurors, they could instruct their representatives as to how they wanted them to vote because they knew what the "evidence" was regarding legislation. It was a simple matter to tell one's representative to vote for or against a matter of public interest because all of the evidence necessary to make such decisions was available to the public, or so they thought. Not so in the context of trials. The public could not instruct jurors because the evidence necessary to make such a decision was not available to the public. It would only be available to the jurors who listened to the evidence at trial.

Certainly, the fact that the colonists retained a right to instruct their representatives but did not retain this

right vis-a-vis jurors demonstrates clearly that they intended to hold at least as tight a rein on their representatives, if not tighter, as they had on their jurors. The essential idea underlying both of these governmental processes was accountability. By instructing their representatives they could hold them accountable.

> "V. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them." (emphasis added) Sources of Our Liberties, supra, (Constitution of Pennsylvania) p. 329.
>
> See also Sources of Our Liberties, supra, Constitution of Massachusetts, V, p. 375.; Sources of Our Liberties, supra, Constitution of New Hampshire, VIII, p. 385.; and Sources of Our Liberties, supra, Constitution of Vermont, p. 365.

They could not instruct their jurors as to how to vote, so in order to insure accountability they retained the right to public trial. Petitioner submits that if

the colonists could have instructed their jurors without offending due process they would probably have done so. But the fact that the colonists retained the right in their earliest constitutions to instruct their representatives (as opposed to jurors whom they did not ever instruct) and the fact that so much emphasis was placed upon accountability makes it clear that they fully intended to retain the right to observe the decision making process of their country. it is significant to note at this point the following language taken from the legislative history of 5 U.S.C. 552, the "Government in the Sunshine Act" and its similarity to the above referenced early colonial statements on accountability:

> "The basic premise of the Sunshine legislation is that in the words of Federalist number 49, 'the people are the only legitimate fountain of power, and it is from them that the constitutional charter....is derived.' Government is and should be the servant of the people, and it should be fully accountable to them

for the actions which it supposedly takes on their behalf.

In the theoretical sense, the agencies in the executive branch are already accountable to the people through the President, who is indirectly elected, and the Congress, whose members are directly elected. This theoretical accountability, though, leaves agency commissioners far removed form the public view in their day to day activities.

Absent special circumstances, there is no reason why the public should not have the right to observe the agency decision making process first hand..." (emphasis added) Legislative History 5 U.S.C. 552, U.S. Code, Congressional and Administrative News, p. 2184.

Why wasn't as much emphasis placed upon the public's right to observe the proceedings of a legislative body, as was placed upon its right to observe a trial? There was no need to explicitly state (although an explicit statement was made in the Massachusetts Body of Liberties, 1641, supra) that the colonists had a right to observe their representatives in the legislature. It was understood that they had this right. Compare, once

again, the control that the early colonists retained over their representatives by retaining the right to instruct them as compared to the control they retained over their jurors by retaining the right to observe them in a public trial. Which is the greater exercise of power or control? Surely, it is the power to instruct. It follows logically, then, that if the colonists retained greater control over their representatives (or at a minimum, equal control) then they did over their jurors, every right they retained over their jurors would certainly have to be included in the rights they retained over their representatives (over whom they had greater control).

At the Constitutional Convention those in favor of retaining the right to instruct representatives were defeated by those arguing that representatives should not be bound by instructions. Schwartz,

supra, p.1091-1105. Nevertheless, it was understood that the people retained the right to observe their representatives:

> "Another objection which has been made, and which, from the frequency of its repetition, it is to be presumed is relied on, is of this nature: 'It is improper (say the objectors) to confer such large powers, as are proposed, upon the National Government because the seat of that government must of necessity be too remote from many of the States to admit of a proper knowledge on the part of the constituent, of the conduct of the representative body'. This argument, if it proves anything, proves that there ought to be no general government whatever. For the powers which, it seems to be agreed on all hands, ought to be vested in the Union, cannot be safely entrusted to a body which is not under every requisite control. But there are satisfactory reasons to show that the objection is in reality not well founded. There is in most of the arguments which relate to distance a palpable illusion of the imagination. What are the sources of information by which the people in Montgomery County must regulate their judgment of the conduct of their representatives in the State Legislature? Of personal observation they have no benefit. This is confined to the citizens on the spot. They must therefore depend on the information of intelligent men, in whom they confide; and how must these men obtain their information?

Evidently from the complexion of public measures, from the public prints, from the correspondences with their representatives, and with other persons who reside at the place of their deliberations. This does not apply to Montgomery County only, but to all counties at any considerable distance from the seat of governement.

It is equally evident that the same sources of information would be open to the people in relation to the conduct of their representatives in the general government, and the impediments to a prompt communication which distance may be supposed to create, will be overbalanced by the effects of the vigilance of the State Governments. The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national counsels, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter, may be relied upon, if it were only from the rival ship of power. And we may conclude with the fullest assurance that the people through that channel, will be better informed of the conduct of their national representatives, then they can be by any means they now possess of that of their State representative.

> It ought also to be remembered that the citizens who inhabit the country at and near the seat of governement will, in all questions that affect the general liberty and prosperity, have the same interest with those who are at a distance, and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union." The Federalist 84, Hamilton, p. 561-563. (emphasis added)

Also noteworthy is the statement of Francis Lieber in 1853:

> "The principal of publicity so pervaded all the American politics, that the framers of our Constitution probably never thought of it, or if they did, they did not think it worthwhile to provide for it in the Constituion, since no one had doubted it." On Civil Liberty and Self Government.

In addition, the early colonial constitutions clearly demonstrate that the words "to petition the governement for a redress of grievances" in the first amendment meant that the people had a right to be present at meetings of Congress. (see Constitution of Massachusetts, paragraph XIX;

Constitution of New Hampshire, paragraph XXXII; Constitution of Pennsylvania, paragraph XVI; Constitution of North Carolina, paragraph XVIII; and Constitution of Vermont, paragraph XVII, supra).

The people retained the right to petition for redress of grievances by petitioning the legislature itself. This necessarily implied that they had a right to be present. While discussing the merits of the clause "to instruct their representatives" during the debates on the Bill of Right, James Madison said:

> "The right of freedom of speech is secured; the liberty of the press is expressly declared to be beyond the reach of this government; the people may therefore publicly address their representatives, may privately advise them, or declare their sentiment by petitions to the whole body..." Schwartz, supra, p. 1096.

The right to petition the legislature for a redress of grievances pervaded English Constitutional history as well. See

English Bill of Rights, 1689, Schwartz, supra, p. 198; Schwartz, supra, p. 198; and Schwartz, supra, p. 217.

If a right of the public and the press to attend criminal trials is guaranteed by the first amendment of the United States Constitution (Richmond Newspapers, Inc.v Virginia, 100 Sup. Ct. 2814, 1980) despite the fact that the first amendment does not specifically mention that right, then, certainly, the right of the public and press to attend meetings of public bodies should be guaranteed by the first amendment given the fact that there is specific mention of the "right ... to petition the government for a redress of grievances."

> "When one finds a right of access 'implicit in the guarantees of the First Amendment', as the Chief Justice does, it defies language and logic to say that the right implied is for trials alone....One section of his (Chief Justice Burger) opinion concludes, 'the explicit, guaranteed rights to speak and to publish concerning what takes place at a trial

would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily.' The First Amendment's 'explicit, guaranteed rights to speak and to publish' are not limited to the subject of trial. That sentence from the Chief Justice's opinion retains its sense and its importance if other official activities are substituted for its references to trial." A Public Right to Know about Public Institutions; The First Amendement as sword; Anthony Lewis; The Supreme Court Review, 1980, p.22

It can also be seen that the right of the public and press to attend meetings of governmental bodies is important to our representative form of government. The right of the public and press to be present at meetings of public bodies serves to prevent abuse of legislative power:

"(U)nder the abominable veil of political secrecy and contrivance, your most valuable rights may be sacrificed by a most corrupt faction, without having the satisfaction of knowing who injured you
...(Legislative representatives) are bound by honor and conscience to act with integrity, but they are under no constitutional restraint...

Give us at least a plausible apology why Congress should keep their proceedings in secret. They have the

> power of keeping them secret as long as they please (in Article 1, section 2, clause 3), for the provision for periodical publication, is too inexplicit and ambigious to avail anything. The expression 'from time to time," as I have more than once observed, admits of any extension. They may carry on the most wicked and pernicious of schemes under the dark veil of secrecy. The liberties of the people never were, not ever will be, secure, when the transactions of their rulers may be concealed from them. The most iniquitous plots may be carried on against their liberty and happiness." 3 Elliot's Debates at 169-170 and 316; statements by Patrick Henry.

It is significant that a similar role is played by the public and the press in an open trial:

> "Even more significantly for our present purpose, Oliver recognized that open trials are bulwarks of our free and democratic government; public access to Court proceedings is one of the numerous 'checks and balances' of our system, because 'contemporaneous review in the form of public opinion is an effective restraint on possible abuse of judicial power,'" Richmond, supra, p. 28, 36; Justice Brennan.

The right of the public and press to attend meetings of public bodies also serves to maintain public confidence in

the legislative process;

> "...an understanding of Government operation and action will promote public confidence in the Government." Legislative History of 5 U.S.C. 552; U.S Code Congressional and Administrative News, 1976, p.2222 and

> "Chief among the benefits (of the legislation) is increasing public understanding of administrative decision making processes... I do not know whether that understanding will lead to greater confidence in administrative decision making.... Quite possibly, it could lead to less confidence. But either of these outcomes...can be beneficial; if, in the light of sunshine a Government agency shows itself to be deserving of trust, then by all means it should have it; conversely, if that same sunlight reveals an agency to be inept, inefficient, and not in pursuit of the public interest, then obviously that agency does not deserve, and should not have, public trust. (Hearings on H.R. 10315 and H.R. 9868, p.98)" Legislative history 5 U.S.C 552, supra, p. 2184.

In this instance also, a similar role is played by the public and the press in an open trial:

> "Secrecy is profoundly inimical to this demonstrative purpose of the trial process. Open trials assure the public that procedural rights are respected, and that justice is afforded equally. Closed trials

> breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice." Richmond, supra, Justice Brennan, p. 2837 and
>
> 'The educative effect of public attendance is a material advantage. Not only is respect for the law increased and intelligent acquaintance acquired with the methods of government, but a strong confidence in judicial remedies is secured which could never be inspired by system secrecy.' 6 Wigmore, supra 438." Richmond, supra, opinion of Chief Justice Berger, p. 2825.

The right of the public and press to attend meetings of public bodies also serves to aid in decision making:

> "Our system of government assumes that citizens have the right to know how their government operated and what the government is doing for them and in their name. Public participation and awareness will be promoted by increasing openness in government and this should lead to improved decision making and greater accountability on the part of the government." Legislative history, 5 U.S.C. 552, supra, p. 2221-2222.

Once again, a similiar role is played by the public and press in an open trial:

"Thus, so far as the trial is the mechanism for judicial fact finding as well as the initial forum for legal decision making, it is a genuine governmental proceeding.... publicizing trial proceedings aids accurate fact finding." Richmond, supra, p. 2838; Justice Brennan.

Above all, the right of the public and press to attend meetings of public bodies is essential to the elective form of government. Without the right to observe the conduct of its representatives, the right of the people to elect their representatives would lose much of its meaning.

"...Secondly, the liberty of investigation is equally indispensable to the judicious exercise of the elective right...

Thirdly, it is to be observed, that the Representative System unavoidably implies an absolute right to investigate the conduct of all public officers..." T. Wortman - a Treatise Concerning Political Inquiry and the Liberty of the Press (1800).

William Bollan and James Alexander, "our two greatest colonial theorists of the rights of free expression":

"...stress the necessity and right of the people to be informed of the con-

duct of their governors so as to shape their own judgments on 'Publick Matters' and be qualified to chose (sic) their representatives wisely." L. Levy, Legacy of Suppression, 137-138 (1960).

And as President Kennedy stated: "...I am not so much concerned about the right of everyone to say anything he pleases as I am about our need as a self governing people to hear everything relevant...

"Only in this way can we as a self governing people choose wisely and thoughtfully in our tasks of self government." N. Minow, Equal Time: The Private Broadcaster and the Public Interest at 148 (1964). See also dissenting opinion of Justice Marshall in Kleindienst v. Mandel, 408 U.S. 753, 775-776 (1972); 27 Ind. L.J. 209, 211-212 (1951).

Next, it is petitioner's contention that the rule of the St. Bernard Parish School Board prohibiting the tape recording of executive sessions is unconstitutionally overbroad. In United States v Columbia Broadcasting System, Inc., 497 Fed. 2nd 102 (5th Cir. 1974), the Judge ordered that all sketching in the Courtroom be prohibited. The Fifth Circuit held that since there was no showing whatsoever

that sketching was in any way obtrusive or disruptive, the restraint imposed by the Court was overly broad and invalid.

In the case at bar, there was no showing whatsoever that tape recording the proceedings of an executive session of the St. Bernard Parish School Board was in any way obtrusive or disruptive. No reason can be put forth distinguishing a sketch from a tape recording in this regard. Both record some part of the proceedings and neither disrupt the proceedings. For this reason, the rule of the St. Bernard Parish School Board prohibiting the tape recording of proceedings of an executive session of that body is uncostitutionally overbroad.

To prohibit plaintiff from tape recording the proceedings of an executive session would also be an arbitrary limitation upon the "stock of information" from which he "may draw". To say that a

tape recording is not allowed would limit his stock of information to only that which he could write down accurately and that which he could remember.

> "The First Amendment goes beyond protection of the press and the self expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." First National Bank of Boston v Bellotti, 435 U.S. 765, 783; 98 S.Ct. 1407, 1419 (1978). and
>
> "Today, however, for the first time, the Court unequivocally holds that an arbitrary interference with access to important information is an abridgment of the freedoms of speech and of the press protected by the First Amendment." Richmond, supra, Steven, J., dissent, p. 2831.

To confine public debate to only that which one is quick enough to write down with his pen and to that which one can remember offends the First Amendment by placing a restraint upon the amount of information one may gather:

> "And public debate must not only be unfettered; it must also be informed. For that reason this Court has repeatedly stated that the First Amendment concerns encompass the

> receipt of information and ideas as well as the right of free expression." Saxbe v Washington, 417 U.S. 843, 862-863, 94 S.Ct. 2811, 2821 (1794); Powell, J., dissent.

In Houchins v KQED, 438 U.S. 1, 17 (1978) Justice Stewart said that when both parties and public were admitted to a prison the press was constitutionally entitled to "effective access" which, in that instance was the admission of TV cameras and sound equipment. In the case at bar, effective access is a tape recording of the proceedings.

Finally, it is the contention of petitioner that to prohibit the recordation by tape of the proceedings of an executive session of the St. Bernard Parish School Board is a form of prior restraint. One should be allowed to publish a tape first and, if it is found to be objectionable in some way, it may then be prohibited or an action may then be taken against the member who published

the tape. But to prohibit one from publishing a tape before he publishes it the first time is a prior restraint of protected speech. In this case, not only is the St. Bernard Parish School Board restraining the publication of protected speech (tape of the proceeding of executive sessions of the St. Bernard Parish School Board) prior to its first publication, but they are prohibiting anyone from even making a private tape recording of the proceedings. In other words, the prior restraint of the publication of tapes of executive sessions of the St. Bernard Parish School Board is accomplished by preventing tapes of the proceedings from even being recorded in the first place. Near v Minnesota, 283 U.S. 697, 51 Sup. Ct. 625 (1931).

For these reasons, petitioner asks that the Court grant a Writ of Certiorari in this matter.

Respectfully submitted,

Roy A. Raspanti
Attorney for
Lynn B. Dean,
petitioner

THE SUPREME COURT OF THE STATE

OF LOUISIANA

LYNN B. DEAN

VERSUS No. 82-C-1429

HONORABLE WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD

- - - - - - - - - - - -

Re: Lynn B. Dean, applying for Certiorari, or Writ of Review, to the Court of Appeal Fourth Circuit, Parish of St. Bernard, Number 12,933.

- - - - - - - - - - - -

July 2, 1982

Denied.

JAD
PFC
WFM
JLD
FAB
JCW
HTL

Supreme Court of Louisiana
July 2, 1982

/s/Frans LaBranche, Jr.
Clerk of Court
For the Court

ASSIGNMENT OF ERROR

The Court erred in finding that the rule of the St. Bernard Parish School Board prohibiting the sound recording of executive sessions by any member of the board does not violate the first amendment to the United States Constitution.

¶ NO. 12933

¶ COURT OF APPEAL
FOURTH CIRCUIT
¶ STATE OF LOUISIANA

LYNN B. DEAN ¶

VS. ¶

HONORABLE WILLIAM J. GUSTE, JR., ATTORNEY GENERAL, OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD

¶ ¶ ¶ ¶

AN APPEAL FROM A DECISION OF THE 34TH JUDICIAL DISTRICT COURT, PARISH OF ST. BERNARD, STATE OF LOUISIANA, HONORABLE RICHARD H. GAUTHIER, PRESIDING.

¶ ¶ ¶ ¶

ISRAEL M. AUGUSTINE, JR.

JUDGE

(Court composed of Judges Denis A. Barry, Israel M. Augustine, Jr., and David R.M. Williams)

JOHN F. ROWLEY, DISTRICT ATTORNEY; NUNZIO S. CUSIMANO, JR., ASSISTANT DISTRICT ATTORNEY; 34TH JUDICIAL DISTRICT COURT, PARISH OF ST. BERNARD Courthouse, Chalmette, Louisiana 70043
(Attorneys for Defendants-Appellees)

ROY A. RASPANTI, 3732 Canal Street; New Orleans, Louisiana 70119

AFFIRMED

MAY 11, 1982

The primary question which we are called upon to decide in this case is whether the rule of the St. Bernard Parish School Board prohibiting the sound recording of executive sessions by any member of the board violates the First Amendment to the United States Cosntitution.

Petitioner, Lynn B. Dean, is a member of the St. Bernard Parish School Board.

In February, 1981, the School Board, by a vote of 10 to 1, enacted a rule prohibiting the tape recordation of the proceedings of an executive session by any members of the board. Mr. Dean's was the only dissenting vote cast.

On March 11, 1981, when Mr. Dean attempted to tape record the proceedings of an executive session of the School Board, he was advised by the board that his actions were in violation of the rule of February, 1981.

to adopt reasonable rules and regulations for the conduct of its business. In this regard, La. R.S. 17:81 provides:

> "Each school board is authorized to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the State Board of Elementary and Secondary Education, as it may deem proper."

La. R.S. 17:6(10) allows the school boards of this State to adopt, amend or repeal rules, regulations and policies necessary or proper for the conduct of the business of the board.

Without addressing the constitutional issues raised by petitioner, the trial court found that the School Board's rule was not arbitrary or unreasonable in light of Louisiana's so-called Sunshine Law. Accordingly, it upheld the regulation under the authority of Estay v. Lafourche Parish School Board, 230 So.2d 443 (L. App. 1st Cir. 1969), which requires the courts of this State to up-

hold the rules and regulations adopted by school boards unless they are found to be arbitrary and unreasonable.

Petitioner now brings this appeal, urging the same grounds as before, but with apparent emphasis on the constitutionality of the School Board's regulation. We think that the constitutional issues raised by the facts of this case warrant our consideration.

Petitioner seeks to invalidate the regulation as prior restraint of speech, citing Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625; 75 L.Ed 1357 (1931). The importance of that category to Mr. Dean's position is that "any system of prior restraints come to this Court bearing a heavy presumption against its constitutional validity." Bantam Books, Inc., v. Sullivan, 372 U.S. 58, 70 (1968); New York Times v. United States, (Pentagon Papers Case), 403 U.S. 713, 714 (1971); Nebraska Press Association v. Stuart,

427 U.S. 539, 556-59 (1976).

THIRTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF ST. BERNARD
STATE OF LOUISIANA

NO. 38-990 Division "B"

LYNN B. DEAN

= Versus =

HONORABLE WILLIAM J. GUSTE, JR., ATTORNEY GENERAL, OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD

J U D G M E N T

This cause came on for trial on Thursday, September 3, 1981.

PRESENT: ROY A. RASPANTI, Attorney for Lynn B. Dean
N.S. CUSIMANO, JR., Attorney for the St. Bernard Parish School Board

When after hearing the pleadings, evidence and argument of counsel, the Court took the matter under advisement.

The Court considering the law and the evidence to be in favor of defendant for reasons assigned in the written opinion of the Court this day delivered and filed:

IT IS ORDERED, ADJUDGED AND DECREED that there by judgment herein in favor of

defendant, ST. BERNARD PARISH SCHOOL BOARD, and against the petitioner, LYNN B. DEAN, dismissing his suit at his costs.

JUDGMENT READ, RENDERED AND SIGNED in Open Court at Chalmette, Louisiana, this 10th day of SEPTEMBER, 1981.

/s/ Richard H. Gauthier
J U D G E

whatever notes you make or whatever is in your mind, but, you better be right, don't be wrong.

THE COURT:

How does that offend the Constitution? What clause of the Constitution does that offend?

MR. RASPANTI:

The First Amendment, the right to free speech.

THE COURT:

How does that offend the right of free speech? Whose speech are you offending?

MR. RASPANTI:

I believe not only the right to speak, but, also addresses to the issue of the right to think and the right to take facts and put them in your memory. If you have a bad memory, like my client, you would have to write down or take notes on a typewriter, whatever,

which would take the time you can use to think, form thoughts before you express your views. That is how it's involved iwth the First Amendment. If you cannot think or get facts and garner them, you don't have a right to free speech. It depends on how good your membory is. It goes back to the same tokin that it would not only assist that one individual, it can assist the members against that individual if he falsely states that a violation of Article 42:6.1 has occured. The best evidence is the tape recorder. he can go to the public and say "Listen to the tape." So, it's to their benefit as well as the individual.

THE COURT:

I hate to keep interrupting you, but, you have not commented on what I

want. I want you to tell me under what authority can the Court interfere with the running of the school system when that school system has not

ROY A. RASPANTI
Attorney for
Lynn B. Dean
Petitioner
3732 Canal Street
New Orleans, Louisiana
70119
Tel: 504- 482-5701

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29 day of September 19 82 Served a copy of the foregoing pleading on all counsel of record by placing a copy of same in the U. S. Mail properly addressed and with sufficient postage.

Roy Raspanti
ROY RASPANTI

SUPREME COURT OF THE

UNITED STATES OF AMERICA

Office - Supreme Court, U.S.
FILED
DEC 1 1982
ALEXANDER L. STEVAS,
CLERK

NO. 82-595

October TERM

LYNN B. DEAN

VS.

HONORABLE WILLIAM J. GUSTE, JR. ATTORNEY GENERAL OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD OF THE STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA

SUPPLEMENTAL APPENDIX

Roy Raspanti

ROY A. RASPANTI
3732 Canal Street
New Orleans, Louisiana
70119
Tel: (504) 482-5701

¶ NO. 12933

¶ COURT OF APPEAL
FOURTH CIRCUIT
¶ STATE OF LOUISIANA

LYNN B. DEAN ¶

VS. ¶

HONORABLE WILLIAM J. GUSTE, JR., ATTORNEY GENERAL, OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD

¶ ¶ ¶ ¶

AN APPEAL FROM A DECISION OF THE 34TH JUDICIAL DISTRICT COURT, PARISH OF ST. BERNARD, STATE OF LOUISIANA, HONORABLE RICHARD H. GAUTHIER, PRESIDING.

¶ ¶ ¶ ¶

ISRAEL M. AUGUSTINE, JR.

JUDGE

(Court composed of Judges Denis A. Barry, Israel M. Augustine, Jr., and David R.M. Williams)

JOHN F. ROWLEY, DISTRICT ATTORNEY; NUNZIO S. CUSIMANO, JR., ASSISTANT DISTRICT ATTORNEY; 34TH JUDICIAL DISTRICT COURT, PARISH OF ST. BERNARD
Courthouse, Chalmette, Louisiana 70043
(Attorneys for Defendents-Appellees)

ROY A. RASPANTI, 3732 Canal Street; New Orleans, Louisiana 70119
(Attorney for Plaintiff-Appellant)

May 11, 1982 AFFIRMED

The primary question which we are called upon to decide in this case is whether the rule of the St. Bernard Parish School Board prohibiting the sound recording of executive sessions by any member of the board violates the First Amendment to the United States Constitution.

Petitioner, Lynn B. Dean, is a member of the St. Bernard Parish School Board.

In February, 1981, the School Board, by a vote of 10 to 1, enacted a rule prohibiting the tape recordation of the proceedings of an executive session by any members of the board. Mr. Dean's was the only dissenting vote cast.

On March 11, 1981, when Mr. Dean attempted to tape record the proceedings of an executive session of the School Board, he was advised by the board that his actions were in violation of the rule of February, 1981.

Petitioner thereafter instituted the present action for declaratory judgment, alleging that the statutory law regarding executive sessions of a public body (La. R.S. 4:1-12) gives no clear answer with respect to the question raised, i.e., whether petitioner may tape record the proceedings of an executive session of the school board.

In argument before the trial court, it was Mr. Dean's contention that the law affords him the right to record executive sessions of the School Board in that:

1) the public is entitled to know the content of discussions at executive sessions of a school board when a question arises as to the propriety of that session;

2) a board member may publish his sentiments on any subject limited only by his responsibility for abuse of that freedom;

3) a board member has the right to

publish the contents of the discussion of an executive session when he has reason to question the propriety of the proceedings and, as a consequence, he has the right to record these proceedings in any manner he sees fit;

4) it is not unlawful for a person who is a party to a conversation to tape that conversation.

In response to these arguments, the defendant contends that Louisiana statutory law confers upon the School Board the right to adopt reasonable rules and regulations for the conduct of its business. In this regard, La. R.S. 17:81 provides:

"Each school board is authorized to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the State Board of Elementary and Secondary Education, as it may deem

proper."

La. R.S. 17:6(10) allows the school boards of this State to adopt, amend or repeal rules, regulations and policies necessary or proper for the conduct of the business of the board.

Without addressing the constitutional issues raised by petitioner, the trial court found that the School Board's rule was not arbitrary or unreasonable in light of Louisiana's so-called Sunshine Law. Accordingly, it upheld the regulation under the authority of Estay v. Lafourche Parish School Board, 230 So.2d 443 (La. App. 1st Cir. 1969), which requires the courts of this State to uphold the rules and regulations adopted by school boards unless they are found to be arbitrary and unreasonable.

Petitioner now brings this appeal, urging the same grounds as before, but with apparent emphasis on the constitutionality of the School Board's regula-

tion. We think that the constitutional issues raised by the facts of this case warrant our consideration.

Petitioner seeks to invalidate the regulation as prior restraint of speech, citing Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625; 75 L.Ed 1357 (1931). The importance of that category to Mr. Dean's position is that "any system of prior restraints comes to this Court bearing a heavy presumption against its constitutional validity." Bantam Books, Inc., v. Sullivan, 372 U.S. 58, 70 (1968); New York Times v. United States, (Pentagon Papers Case), 403 U.S. 713, 714 (1971); Nebraska Press Association v. Stuart, 427 U.S. 539, 556-59 (1976).

Such a regulation as concerns us here was attacked as a prior restraint in CBS, Inc., v. Lieberman, 439 F. Supp. 862 (E.D. Ill. 1976). There CBS faced an unwritten policy of the Illinois Commerce Commission which prohibited the filming, photographing and tape recording of open

meetings held by the commission. It was found that inasmuch as CBS had not been prevented from disseminating news or comment upon the proceedings before the commission, the regulation did not operate as a prior restraint upon publication by CBS.

We find that reasoning to be applicable here. Neither the School Board nor any other authority has sought to prevent publication of any message by Mr. Dean. He remains free to publish whatever he chooses concerning any matter entertained by the School Board, limited only by his own discretion and the laws of this State governing defamation. Accordingly, we hold that the questioned regulation does not operate as a prior restraint.

Alternatively, petitioner urges that the School Board's regulation is an unconstitutional abridgement of the right to gather information, protected by the First Amendment. His premises for this

conclusion are that the details of the School Board's executive sessions are matters of public interest of which the public may assert a right to know and that, as a representative of the public and member of the School Board, it is his duty to convey these matters to the public as completely and accurately as possible; that the duty to convey information regarding these matters necessarily implies the right to gather information by the most accurate means at his disposal, i.e., his tape recorder.

The premises of petitioner's argument appeal to legitimate First Amendment concerns. Our form of democracy presupposes an informed vote, the product of a free flow of information and ideas. We recognize the primacy of the First Amendment among constitutional values and consider that it must derive from the special mission of the press and a freely speaking public to hold government

accountable to the people. We do not argue with the petitioner's contention that the right of access to information and the right to gather information have some constitutional dimension.

These rights were first recognized in Zemel v. Rusk, 381 U.S. 1; 85 S.Ct. 1271, 14 L. Ed 2d 179 (1965), where it was said that "The right to speak and publish does not carry with it the unrestrained right to gather information" - thus implying the existence of some right, however limited. Later, the Court in Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed 2d 626 (1972) remarked that "news gathering is not without its First Amendment protections". But whatever vague dimension these cases give to the right to gather information must be considered in light of this: the common-law has never recognized the right of the public to attend meetings of governmental bodies. Cross, The Peoples'

Right to Know, 180-182; Open Meeting Statutes: The Press Fights for the Right to Know, 75 Harv. L. Rev. 1199 (1962). The right is not expressly conferred by the terms of the Constitution itself, nor can there be found a single case which notices an implied constitutional right to attend, for example, sessions of a state legislature or of the United States Congress. Prior to the enactment by the various states of so-called Sunshine Laws, to the extent that public attendance at such meetings existed, it had been a function not of right, but of custom.

Indeed, only recently it announced for the first time that the First Amendment establishes the right of the public to attend a criminal trial. Richmond Newspapers Inc. v. Virginia, 100 S.Ct. 2814 (1980). But the exceptional nature of this right is derived from the tradition of the English common law which

has emphasized the public character of a criminal trial since the days before the Norman Conquest.

The same cannot be said of other asserted rights of public access to information. In Gannett Co., Inc. v. De Pasquale, 443 U.S. 368, 99 S.Ct. 2898, 61 L. Ed 2d 608 (1979), where it was held that the press and public are afforded no right deriving from the Constitution to attend pre-trial hearings in a criminal case, Justice Rehnquist stated in a concurring opinion that "this Court emphatically has rejected the proposition...that the First Amendment is some sort of constitutional sunshine law," and that "there is no First Amendment right of access in the public or the press to judicial or other governmental proceedings", citing Nixon v. Warner Communications, Inc., 435 U.S. 589, 609; 98 S.Ct. 1306, 1317; 55 L.Ed 2d 570 (1978); Saxbe v. Washington Post Co., 417

U.S. 843, 850; 94 S.Ct. 2811, 2815; 41 L. Ed. 2d 514 (1974); Pell v. Procunier, 417 U.S. 817, 834; 94 S.Ct. 2800, 2810; 41 L.Ed. 2d 495 (1974); Branzburg v. Hayes, 408 U.S. 665, 684-685; 92 S.Ct. 2646, 2658-2659; 33 L.Ed. 2d 626 (1972); Zemel v. Rusk, 381 U.S. 1, 85 S.Ct. 1271, 1280-1281, 14 L.Ed. 2d 179 (1965) and Houchins v. KQED, Inc., 438 U.S. 1, 9-15; 98 S.Ct. 2588, 2594-2597, 51 L.Ed. 2d 553 (1978).

In Houchins, supra, the issue was whether the news media have a constitutional right of access to a county jail, over and above that of other persons, to interview inmates and make sound recordings and films, etc., for publication. It was held that such a right does not exist. Justice Stewart stated in a concurring opinion that "The First and Fourteenth Amendments do not guarantee the public a right of access to information generated or controlled by

government... The Constitution does no more than assure the public and the press equal access once government has opened best answered by resort to the legislative process where the coercive effect of public opinion can be brought to bear against those bodies which decide truly public issues behind closed doors. Id, at 2596.

The point of this discussion is that the States are altogether without constitutional impediment should they decide to close the doors of their legislative chambers and other governmental bodies.

It follows that if the States are free to prohibit public attendance at meetings of governmental bodies, they are free to prohibit the tape recording of those proceedings by those who are enabled to attend not by virtue of the Constitution, but by statute.

We see no reason to afford peti-

tioner, as a member of the School Board, any special rights under the First Amendment over and above those which reside in the general public. To the extent that we have considered petitioner's claimed right in terms of public access, we have done so because of his assertion that he seeks to act as a representative of the public in their right to know. The question of government's duty to convey information to the public is but the other side of the coin, and finding there no constitutionally imposed duty, we must recognize the right of the School Board to employ reasonable means to restrict the flow of information between itself and the public. We therefore hold that the School Board's regulation which prohibits the tape recordation of its executive sessions does not offend the First Amendment.

We reach this conclusion with due

regard for the democratic principles which require government's openness and responsibility to an informed electorate. In the aftermath of Richmond Newspapers, supra, the Supreme Court of the United States may yet discover in the First Amendment a right of the public to attend meetings of governmental bodies, if not on the basis of tradition, then perhaps for the reason that government's accountability to the people depends so much upon the visibility of the decision-making process. See The Public Right to Know - The First Amendment as a Sword, 1980, Supreme Court Review, 1-25. But even if we ourselves were inclined to acknowledge that right, we would not choose the present case to announce it. Here, petitioner seeks to record not the public meetings of the School Board, but its executive sessions.

Louisiana's Constitution, while creating the presumption that meetings of

public bodies are open to the public, nevertheless allows the legislature to exempt from public deliberation specific topics whose matter requires the more private treatment afforded by executive sessions. [1] La. R.S. 42:6 expressly limits discussion or deliberation in executive sessions to those matters defined in La. R.S. 42:61. Among these are discussions of the character, professional competence, or physical or mental health of a person; strategy sessions or negotiations with respect to collective bargaining; litigation, when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body and investigative proceedings regarding allegations of misconduct. Also specifically exempted are discussions between a city or parish

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[1] "No person shall be denied the right to observe the deliberations of public bodies...except in cases established by law." La. Const. art. XII,§3.

school board and individual students, or their parents, regarding the problems of such students.

Considering the nature of these topics, we are of the opinion that the balance of the First Amendment rights against the legitimate needs of governmental privacy as to those enumerated matters must weight in favor of the latter. Governmental efficiency - and by that we mean not merely the volume of work product, but fruitful, fair and accurate decision-making - is enhanced by the uninhibited and vigorous flow of debate. Certain matters, such as those exempted and designated for closed hearing, do not lend themselves to such treatment by public officials unless the public is excluded. In the end, there must be an acknowledgment that the public's right to know is not absolute. Even Branzburg, which we cited earlier as one of the first cases to recognize the

constitutional nature of the right to gather information, accepted as unquestionable the exclusion of the press from grand jury proceedings, judicial conferences, and the meetings of other official bodies gathered in executive session. 92. S.Ct. 2646, at 2658.

Having found that the United States Constitution affords petitioner no right to record executive sessions of the School Board, we now turn to Louisiana law.

As to the recording of the proceedings of public bodies, La. R.S. 42:8 provides that "All or any part of the proceedings in a public meeting may be recorded by any person in attendance by means of a tape recorder or any other means of reproduction." (Emphasis ours)

There is no similar provision relating to the recordation of executive sessions. We interpret the legislature's silence on this matter to mean that each

public body should have the prerogative to allow or prohibit the use of tape recorders at closed meetings.

In light of that interpretation, we hold that the School Board's prohibition is neither arbitrary nor unreasonable, and therefore must be upheld. Estay v. Lafourche Parish School Board, 230 So.2d 443 (La. App. 1st Cir. 1969).

Finally, throughout the course of our deliberations on this subject, we have borne in mind that Mr. Dean's announced purpose is to employ tape recordings to verify misconduct on the part of the School Board in the event it should arise. But this anticipation of wrongdoing reveals an antagonism which we cannot share. We will not presume that the School Board will violate its public trust and the law of this state by closing its doors to discuss matters which by law are afforded public deli-

beration. To the contrary, it is to be presumed that public officials will perform their duties in good faith and in a manner loyal to the public interest.

In the event that violations do occur, Mr. Dean and the people of St. Bernard Parish will have the legal means to rectify it. La. R.S. 42:9 provides for the voidability of any action taken by the School Board in violation of the Sunshine Law provisions (La. R.S. 42:41 et seq.). La. R.S. 42:11 further allows enforcement of the law by writ of mandamus, injunctive relief and declaratory judgment, and any noncompliance with the orders of the court in these matters is, of course, punishable as contempt.

In any event, petitioner is free to discuss with anyone the matters brought into executive session, the only bounds being his own sense of propriety. Under these circumstances, we find no reason to regard the School Board's regulation as

arbitrary or unreasonable.

For the reasons assigned, the judgment of the trial court is affirmed.

AFFIRMED